

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21397  
Docket Number CL-21252

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Maine Central Railroad Company  
( Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7855) that:

1. Carrier violated Article 21, Paragraph (a) when it allowed an employe not coming within the Scope of the January 1, 1951 Agreement to handle two (2) train orders on the Mountain Division at Hiram, Maine on March 3, 1974, at 8:00 P.M.

2. Carrier shall be required to compensate Mr. W. C. Carkin, a two (2) hour call at punitive rate in accordance with Article 21, Paragraph (b) and Article 7.

3. Carrier shall also allow the mileage and deadhead time he would have received had he been called.

OPINION OF BOARD: As a consequence of a derailment near Hiram, Maine on March 2, 1974, two work trains were dispatched to the scene of the wreck to clear the tracks. When this was accomplished that night the crews were ready to return to their headquarters. It was determined that they lacked train orders for their departure. Trainmaster Bickford called the Train Dispatcher who then issued a train order for each work train. Trainmaster Bickford then copied the order and delivered one to each train. This claim arises because Claimant Carkin is a regularly assigned Agent located at South Windham, Maine with assigned hours of 7:00 A.M. to 4:00 P.M. with Saturday and Sunday as rest days. It is Claimant's contention that Hiram, Maine is under the jurisdiction of his work location, being approximately twenty-six miles from South Windham. Carrier denies this and maintains there was no violation of Article 21 (b) of the applicable agreement. On this basis the claim was progressed on the property until submission to this Board.

Article 21 deals with "Handling Train Orders" and subsections (a) and (b) are quoted here:

"(a) No employe other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders except in cases of emergency.

"(b) If train orders are handled at stations or locations where an employe covered by this Agreement is employed but

not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of Article 7; if available and not called, the employe will be compensated as if he had been called."

There is no claim that the case presents a question of emergency insofar as the handling of the train orders involved work trains returning from a derailment. The Claimant maintains he was available for call at the time involved and, in fact, he had been alerted to receive such call; but no further facts are stated and Carrier does not contest this.

Both parties make reference to Award 20074 (Hays) of this Division which involved the same Claimant, Carrier, work and rules. In that award this Board denied the claim. It is the contention of the Claimant here that in that award the Referee either misunderstood the facts or was not knowledgeable in the history of train orders. The Carrier, for its part, relies upon that award and insists it should be followed in accordance with the rules of this Board unless it is palpably erroneous. The differences between the two cases are more accidental than substantial. There an Engineer Department Supervisor delivered the train orders to a location 60 or 65 miles from South Windham. Claimant Carkins there maintained the train location at Bartlett, Maine was within the South Windham jurisdiction. There was no emergency in that case. Relying upon an earlier award of Referee Parker, Award 6863 which interpreted Article 21 (b) as modifying subsection (a) to the effect that "if train orders are handled at stations where no member of the craft is employed they may be handled by other employes..."

The second ground for the award is the long-standing practice by Carrier in handling "in care of" train orders by delivering such orders to the point where they were to be placed in effect, when there was no telegrapher employed, by an employe other than a Telegrapher.

The award concludes with recognition of the long history of conflicting awards of the Third Division as "past practices" indicating it was of the opinion the Employees were aware of such practice and never properly challenged it.

We have reviewed the awards cited by both the Carrier and the Employees here and we conclude that Award 20074 is controlling and this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The contract was not violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.